

ESTTA Tracking number: **ESTTA126480**

Filing date: **02/22/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92046853
Party	Plaintiff STEPHEN SLESINGER, INC STEPHEN SLESINGER, INC ,
Correspondence Address	ANDREW D. SKALE BUCHANAN INGERSOLL & ROONEY P.C. P.O. BOX 1404 ALEXANDRIA, VA 22313-1404 UNITED STATES
Submission	Opposition/Response to Motion
Filer's Name	Fred W. Hathaway
Filer's e-mail	fred.hathaway@bipc.com
Signature	/FWH/
Date	02/22/2007
Attachments	oppositi.pdf (64 pages)(3154083 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

STEPHEN SLESINGER, INC.,

Petitioner,

v.

DISNEY ENTERPRISES, INC.,

Respondent.

:
:
:
:
:
:
:
:
:
:
:
:

Opposition No. 92/046,853

**PETITIONER’S OPPOSITION TO RESPONDENT’S
MOTION TO SUSPEND PROCEEDINGS PURSUANT TO 37 C.F.R. § 2.117**

Pursuant to TBMP §502.02(b), Petitioner Stephen Slesinger, Inc. (“Slesinger”) hereby submits this brief in opposition to Respondent Disney Enterprises, Inc.’s Motion to Suspend Proceedings Pursuant to 37 C.F.R. § 2.117. Petitioner respectfully requests that the Board deny Respondent’s Motion and allow this cancellation to proceed without suspension.

I. INTRODUCTION

Slesinger and Respondent Disney Enterprises, Inc. (“Disney”) are currently engaged in an action in the United States District Court for the Central District of California (the “federal court action”) that started when Disney sued Slesinger for a declaration that two notices of termination served under Section 304(d) of the Copyright Act by the respective granddaughters of the author and an illustrator of the first four Winnie the Pooh books (the “Pooh Works”) were valid and that Disney’s royalty obligations to Slesinger, which licensed certain rights in the works to Disney, should cease in November 2004. Slesinger alleged various counterclaims against Disney, based upon Disney’s copyright infringement, breach of contract, and fraudulent

nonpayment of royalties under the license, but also for trademark infringement and unfair competition based on Disney's use of the characters in the Pooh Works (the "Pooh Characters") beyond the scope of the original license. Disney's claims against Slesinger have since been dismissed.

Separate and apart from its claims in the federal court action, Slesinger filed a Petition for Cancellation (the "Petition") of various trademark registrations for the Pooh Characters that Disney fraudulently obtained from the PTO.

Disney now seeks to suspend the Petition pending the outcome of the federal court action. According to Disney, the Petition "raises the same issues and seeks effectively the same relief" as the federal court action. Moreover, Disney claims that a stipulation entered in the federal court action bars Slesinger from seeking cancellation of the registrations until Slesinger's counterclaims against Disney are resolved. None of what Disney says is true.

Section 510.02(a) of the Trademark Trial and Appeal Board Manual of Procedure ("TBMP") states that "[w]henever it comes to the attention of the Board that a party or parties to a case pending before it are involved in a civil action which may have a bearing on the Board case, proceedings before the Board *may* be suspended until final determination of the civil action." (Emphasis added.) As the Board noted in *Boyd's Collection Ltd. v. Herrington & Co.*, 65 U.S.P.Q.2d 2017, 2018 (TTAB 2003), the use of the permissive word "may" clearly indicates "that suspension is not the necessary result in all cases."

In the present case, suspension would be inappropriate for several reasons. Principally, the Petition for Cancellation is based on different grounds and seeks different relief than Slesinger's counterclaim in the federal court action. Moreover, since the filing of Disney's Motion to Suspend, Disney's claims against Slesinger in the federal court action have been dismissed. Finally, the stipulation to which Disney refers has no relevance to the question and

presents no obstacle to the Board's adjudication of the claims raised in the Petition. Therefore, Slesinger respectfully requests that the Board deny Disney's Motion to Suspend.

II. THE PETITION FOR CANCELLATION RAISES DIFFERENT ISSUES AND SEEKS DIFFERENT RELIEF THAN THE FEDERAL COURT ACTION

Disney argues that the Petition for Cancellation raises the identical issues and seeks "effectively" the same relief as the pending federal court action. (Respondent's Motion at p. 2.) Neither of these assertions is true. Slesinger's counterclaims against Disney in the federal court action include substantial claims based upon copyright infringement, breach of contract, and fraudulent royalty statements, which do not require trademark analysis. Although Slesinger's counterclaims include a claim for trademark infringement and unfair competition under Section 43(a), that counterclaim alleges that Disney exceeded the scope of the license Slesinger granted it to use the Winnie the Pooh marks on various goods and services. (Exhibit 1 at ¶¶ 130-134.)

In contrast, Slesinger's claims in the Petition for Cancellation allege that Disney made false statements to the PTO "with the intent to procure registrations to which Respondent was not entitled" and that Disney's registrations are "void pursuant to Section 1 of the Trademark Act as the applications were filed and prosecuted by an entity other than the owner of the subject trademarks." (Petition for Cancellation at ¶¶ 7, 9.) These fraud and lack of ownership claims are not included in Slesinger's counterclaims in the federal court action.

Disney also alleges that the Petition for Cancellation and the counterclaim in the federal court action seek the same relief. Again, Disney is incorrect. The trademark claim in the federal court action seeks "treble profits or damages, whichever is greater, together with reasonable attorney's fees and prejudgment interest," incidentally seeking that the court direct the USPTO to correct the title of certain trademark registrations. (Exhibit 1 at ¶¶ 135-137.) In contrast, the

Petition for Cancellation does not seek any monetary damages and does not request the USPTO to modify the title of the registrations, but rather seeks to have the registrations cancelled outright. (Petition for Cancellation at p. 4.) This is a much more drastic remedy and is clearly not the same or even “effectively” the same relief, as Disney alleges. There is no relief being sought from the district court which, if granted, would cancel all or even some of Disney’s Winnie the Pooh trademark registrations.

The cases cited by Disney are distinguishable in that in those cases the opposer or petitioner was raising the exact same issues and/or seeking the exact same relief in the pending district court cases. *See, e.g., General Motors Corp. v. Cadillac Club Fashions, Inc.*, 22 U.S.P.Q.2d 1933, 1937 (TTAB 1992) (“A review of the complaint in the civil action indicates that a decision by the district court will be dispositive of the issues in this proceeding. In fact, petitioner has asked the court to cancel respondent’s registrations.”); *Whopper-Burger, Inc. v. Burger King Corp.*, 171 U.S.P.Q. 850 (TTAB 1971) (“[P]etitioner has asked the United States District Court to direct the Patent Office to cancel Registration No. 782,990 here involved. There can be no doubt therefore that the outcome of the civil action will have a direct bearing on the question of the rights of the parties herein and may in fact completely resolve all the issues.”).

The Petition for Cancellation raises different claims and seeks different relief from the trademark counterclaim in the federal court action. Therefore, there is no justification for suspending the cancellation pending the final outcome of the federal court action, since a suspension would unnecessarily delay the adjudication of the fraud and lack of ownership claims raised in the Petition and would be unfairly prejudicial to Petitioner.

III. THE MAIN CLAIMS IN THE CIVIL COURT ACTION HAVE BEEN RESOLVED IN FAVOR OF SLESINGER AND THE ALLEGED STIPULATION IS IRRELEVANT

Disney filed their Motion to Suspend on February 2, 2007, at which time all claims in the district court action were still pending. However, on February 15, 2007, the judge in the federal court action entered an Order granting Defendant Slesinger's Motion for Summary Judgment on Disney's claims. (Exhibit 2.)¹

Moreover, contrary to Disney's assertions, the October 19, 2006 Stipulation between the parties does not apply to the Board's adjudication of the issues raised in the Petition for Cancellation. Disney claims that the parties agreed "that the trademark issues will be resolved in a subsequent phase of the pending district court case." (Respondent's Motion at p. 2.) This is an overly broad reading of the stipulation *and* the supposed purpose of the stipulation. The stipulation only pertained to Disney's time to answer the counterclaims in Slesinger's Fourth Amended Answer; there is nothing in the stipulation which prevents Slesinger from raising separate trademark issues in another action, such as the current Petition for Cancellation. Moreover, in light of the federal court's decision granting summary judgment to Slesinger on Disney's copyright claims (referred to in the Stipulation as the "Phase 1" trial), the continued viability of the Stipulation is seriously suspect.

¹ The summary judgment order was filed under seal, for attorneys' eyes only. Therefore, Petitioner is not attaching a copy of the order, but instead attaches as Exhibit 2 a minute order reflecting the summary judgment.

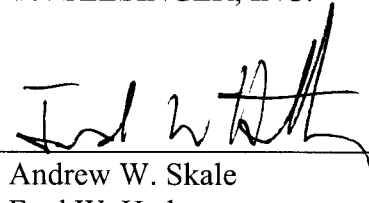
III. CONCLUSION

For the reasons set forth above, Slesinger respectfully requests that the Board deny Disney's Motion to Suspend and allow the cancellation to proceed.

Respectfully submitted,

STEPHEN SLESINGER, INC.

By

A handwritten signature in black ink, appearing to read 'Andrew W. Skale', is written over a horizontal line.

Andrew W. Skale
Fred W. Hathaway
Bryce J. Maynard
Attorneys for Petitioner

Date: February 22, 2007

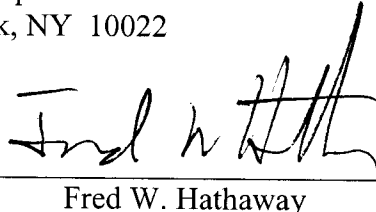
BUCHANAN INGERSOLL & ROONEY PC
1737 King Street
Alexandria, VA 22314-2727
Telephone: 703/836-6620
Facsimile: 703/836-2021

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **PETITIONER'S OPPOSITION TO
RESPONDENT'S MOTION TO SUSPEND PROCEEDINGS PURSUANT TO 37 C.F.R. §**

2.117 was served this 22nd day of February, 2007, by first-class mail, postage prepaid, on:

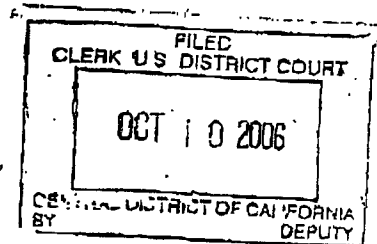
Dale M. Cendali, Esq.
O'Melveny & Myers LLP
7 Times Square
New York, NY 10022



Fred W. Hathaway

Exhibit 1

1 JOSEPH W. COTCHETT (#36324)
2 NANCY L. FINEMAN (#124870)
3 ROBERT B. HUTCHINSON (#45367)
4 PHILIP L. GREGORY (#95217)
5 DOUGLAS Y. PARK (#233398)
6 COTCHETT, PITRE, SIMON & McCARTHY
7 840 Malcolm Road, Suite 200
8 Burlingame, CA 94010
9 Telephone: (650) 697-6000



10 Attorneys for Defendant and Counter-Claimant
11 STEPHEN SLESINGER, INC.

[PROPOSED]

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 CLARE MILNE, an individual,
13 by and through MICHAEL
14 JOSEPH COYNE, her Receiver,
15 and DISNEY ENTERPRISES,
16 INC.

17 Plaintiffs,

18 v.

19 STEPHEN SLESINGER, INC.

20 Defendant.

21 STEPHEN SLESINGER, INC.,
22 Counter-Claimant,

23 v.

24 DISNEY ENTERPRISES, INC.;
25 THE WALT DISNEY
26 COMPANY; and WALT
27 DISNEY PRODUCTIONS

28 Counter-Defendants.

Case No. CV-02-08508 FMC (PLAx)

DEFENDANT AND COUNTER-
CLAIMANT STEPHEN SLESINGER,
INC.'S FOURTH AMENDED ANSWER
AND COUNTERCLAIMS

1. INFRINGEMENT OF RIGHTS UNDER THE UNITED STATES COPYRIGHT ACT
2. TRADEMARK INFRINGEMENT
3. TRADE DRESS INFRINGEMENT
4. BREACH OF CONTRACT
5. BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
6. FRAUD
7. DECLARATORY RELIEF RE THE 1983 AGREEMENT
8. DECLARATORY RELIEF RE INVALIDITY OF HUNT TERMINATION NOTICE
9. DECLARATORY RELIEF RE INVALIDITY OF THE REVERSION AGREEMENT
10. INJUNCTIVE RELIEF
11. DECLARATORY RELIEF RE LIMITED SCOPE OF HUNT TERMINATION NOTICE
12. VIOLATION OF CALIFORNIA BUSINESS AND PROFESSION CODE §17200 et seq. AND UNFAIR COMPETITION

JURY TRIAL DEMANDED

STEPHEN SLESINGER, INC.'S FOURTH AMENDED ANSWER AND COUNTERCLAIMS
Milne, et al. v. Stephen Slesinger, Inc., Case No. CV-02-08508 FMC (PLAx)

COTCHETT
PITRE, SIMON &
McCARTHY

TABLE OF CONTENTS

	<u>Page No.</u>
ANSWER	1
COUNTERCLAIMS	9
I. INTRODUCTION	9
II. JURISDICTION AND VENUE	10
III. THE PARTIES	11
IV. FACTUAL BACKGROUND	12
A. THE POOH FAMILY OF CHARACTERS ARE BORN ...	12
B. BACKGROUND ON STEPHEN SLESINGER	13
C. INITIAL AGREEMENTS BETWEEN MILNE AND SLESINGER	14
D. STEPHEN SLESINGER POPULARIZES POOH	16
E. SHIRLEY SLESINGER LASSWELL CONTINUES TO DEVELOP THE POOH FAMILY OF CHARACTERS	17
F. SLESINGER AND DISNEY: THE 1961 AGREEMENT ...	18
G. UNDERPAYMENTS BY DISNEY ARE EXPOSED AND THE PARTIES ENTER INTO THE 1983 AGREEMENT ..	21
H. DESPITE ITS PROMISES AND AGREEMENTS, DISNEY CONTINUES TO UNDERPAY SLESINGER AFTER THE 1983 AGREEMENT	24
I. DISNEY IMPROPERLY USES THE COPYRIGHT ACT TO ATTEMPT TO CUT OFF SLESINGER'S RIGHTS	25
J. THE POOH BRAND IS CRITICAL TO DISNEY'S BUSINESS	28
K. DISNEY'S IMPROPER ROYALTY STATEMENTS	30
V. CLAIMS FOR RELIEF	31
PRAYER FOR RELIEF	47
JURY DEMAND	52

1 Defendant Stephen Slesinger, Inc., by its attorneys, answers the First
2 Amended Complaint as follows:

3 1-3. Defendant admits that plaintiffs purport to assert that this Court has
4 subject matter, personal jurisdiction and venue as alleged in paragraphs 1, 2, and 3
5 but otherwise denies the allegations contained in these paragraphs.

6 4. Defendant denies having sufficient knowledge or information to form
7 a belief as to the allegations contained in paragraph 4 and therefore denies the
8 same.

9 5. Defendant denies having sufficient knowledge or information to form
10 a belief as to the allegations contained in paragraph 5 and therefore denies the
11 same.

12 6. Defendant denies the allegations contained in paragraph 6 to the
13 extent these imply that plaintiff Disney owns the Winnie-the-Pooh character, and
14 further denies having sufficient knowledge or information to form a belief as to
15 the remaining allegations of paragraph 6 and therefore denies the same.

16 7. Defendant denies the allegations contained in paragraph 7 except
17 admits it is a New York Corporation with its principal place of business in Tampa,
18 Florida, that much of its revenues are derived from payments made to it by
19 Disney-related entities pursuant to an agreement dated April 1, 1983, in which it
20 licensed to Walt Disney Productions certain rights it obtained from the trustees of
21 Pooh Properties Trust, also on April 1, 1983 (the "1983 Agreement").

22 8. Because the allegations contained in paragraph 8 are conclusions of
23 law that require neither an admission nor a denial, defendant respectfully refers the
24 Court to the statute and authorities interpreting the same for the meaning thereof.

25 9. Because the allegations contained in paragraph 9 are conclusions of
26 law that require neither an admission nor a denial, defendant respectfully refers the
27 Court to the statute and authorities interpreting the same for the meaning thereof.

1 10. Defendant denies the allegations contained in paragraph 10 but admits
2 that plaintiffs characterize their action as set forth therein.

3 11. Defendant denies having sufficient knowledge or information to form
4 a belief as to the allegations contained in the first sentence of paragraph 11 and
5 therefore denies the same, and denies the remaining allegations contained in
6 paragraph 11.

7 12. Defendant admits the allegations contained in paragraph 12.

8 13. Defendant denies having sufficient knowledge or information to form
9 a belief as to the allegations contained in paragraph 13 and therefore denies the
10 same.

11 14. Defendant denies the allegations contained in paragraph 14 except
12 admits that in January 1930 A. A. Milne and defendant's predecessor, Stephen
13 Slesinger, entered into a Memorandum of Agreement (the "1930 Grant"), which
14 memorandum speaks for itself, and defendant respectfully refers the Court thereto
15 for the contents thereof and further admits the allegation contained in the last
16 sentence of paragraph 14.

17 15. Defendant denies having sufficient knowledge or information to form
18 a belief as to the allegations contained in paragraph 15 and therefore denies the
19 same.

20 16. Defendant admits that it entered into an agreement in 1961 with Walt
21 Disney Productions (the "1961 Slesinger Disney Agreement") and further admits
22 that Walt Disney Productions entered into an agreement in 1961 with the
23 executors of the Milne estate and with Daphne Milne in her individual capacity,
24 which agreements speak for themselves, and defendant respectfully refers the
25 Court to the contents thereof and otherwise denies the allegations contained in
26 paragraph 16.

27 17. Defendant denies the allegations contained in paragraph 17 except
28 admits that in 1983 it entered into a new agreement with Walt Disney Productions,

1 Slesinger, Christopher Milne - plaintiff Clare Milne's father - and the Pooh
2 Properties Trust in which, inter alia, the 1930 Grant by A. A. Milne to defendant's
3 predecessor, and all amendments thereto, were revoked and a new grant of rights
4 was made to defendant and further admits that in 1983 Walt Disney Productions
5 and the Pooh Properties Trustees entered into an agreement.

6 18. Defendant denies having sufficient knowledge or information to form
7 a belief as to the allegations of paragraph 18 and therefore denies the same except
8 asserts that the Termination Notices purportedly served by plaintiff Clare Milne
9 and Harriet Jessie Minette Hunt (the "Termination Notices") speak for themselves,
10 and respectfully refers the Court thereto for the contents thereof.

11 19. Defendant denies having sufficient knowledge or information to form
12 a belief as to the allegations contained in paragraph 19 and therefore denies the
13 same.

14 20. Defendant incorporates herein by reference all of the allegations and
15 averments contained in paragraphs 1 through 19 of this Answer.

16 21. Defendant denies having sufficient knowledge or information to form
17 a belief as to the allegations contained in paragraph 21 and therefore denies the
18 same.

19 22. Defendant denies the allegations contained in paragraph 22.

20 23. Defendant admits the allegations contained in paragraph 23.

21 24. Defendant denies the allegations contained in paragraph 24 except
22 admits that Milne alleges that Milne seeks a declaration that the Milne
23 Termination Notice is valid.

24 25. Defendant incorporates herein by reference all of the allegations and
25 averments contained in paragraphs 1 through 24 of this Answer.

26 26. Defendant denies having sufficient knowledge or information to form
27 a belief as to the allegations contained in paragraph 26 and therefore denies the
28 same.

1 27. Defendant admits the allegations contained in paragraph 27.

2 28. Defendant denies the allegations contained in paragraph 28 except
3 admits that Disney alleges that it seeks a declaration that the Hunt Termination
4 Notice is valid.

5 **AFFIRMATIVE DEFENSES**

6 **FIRST COMPLETE AFFIRMATIVE DEFENSE**

7 29. Plaintiffs' First Amended Complaint fails to state a claim upon which
8 relief may be granted.

9 **SECOND COMPLETE AFFIRMATIVE DEFENSE**

10 30. Plaintiffs' claims fail because the agreement or agreements they claim
11 will be terminated by the Termination Notices were lawfully revoked in 1983 and
12 are no longer subject to termination.

13 **THIRD COMPLETE AFFIRMATIVE DEFENSE**

14 31. Plaintiffs' claims with respect to the agreements and events that took
15 place in 1983 are barred by the doctrines of laches, waiver, and/or estoppel.

16 **FOURTH COMPLETE AFFIRMATIVE DEFENSE**

17 32. Plaintiffs' claims based upon the alleged validity and effectiveness of
18 the Termination Notices served by Milne and Hunt on or about November 4, 2002
19 are legally untenable because: (1) such Termination Notices fail to comply with
20 the requirements of the United States Copyright Act as to identification of the
21 grants purportedly terminated and of the works allegedly covered by such
22 Termination Notices; and/or (2) Slesinger's rights at issue are not encompassed by
23 the grants purportedly identified in such Termination Notices but are included in
24 other agreements or were otherwise obtained by Slesinger, including but not
25 limited to, by virtue of agreements, consents, or by operation of law.

1 **FIFTH COMPLETE AFFIRMATIVE DEFENSE**

2 33. Plaintiffs' claims should be dismissed because plaintiffs have failed to
3 join the Pooh Properties Trust and the Walt Disney Company, which are necessary
4 and/or indispensable parties hereto pursuant to Fed. R. Civ. P. 19.

5 **SIXTH COMPLETE AND/OR**
6 **PARTIAL AFFIRMATIVE DEFENSE**

7 34. Plaintiffs' claims with respect to the validity and effectiveness of the
8 Termination Notices served by Milne and Hunt on or about November 4, 2002, are
9 barred by the doctrines of laches, waiver, and/or estoppel.

10 **SEVENTH COMPLETE AND/OR**
11 **PARTIAL AFFIRMATIVE DEFENSE**

12 35. Any termination by Milne and/or Hunt pursuant to section 304(d) of
13 the United States Copyright Act of the 1930 Grant or the 1983 Agreement could,
14 inter alia, only affect rights under United States copyright granted thereunder.
15 Such termination could not have any effect on Slesinger's rights to continue to
16 utilize derivative works prepared pursuant to rights granted to Slesinger in the
17 1930 Grant or thereafter, or to continue to exercise rights and/or receive royalties
18 not arising under the United States Copyright Act, including but not limited to
19 those arising under federal, state, and/or foreign trademark and unfair competition
20 laws or under foreign copyright laws.

21 **EIGHTH COMPLETE AFFIRMATIVE DEFENSE**

22 36. Plaintiffs' claims are barred by the doctrine of unclean hands.

23 **NINTH COMPLETE AFFIRMATIVE DEFENSE**

24 37. Plaintiffs' claims are barred by the statute of limitations including but
25 not limited to, Cal. Civ. Code. §§ 337 - 1, 3, 338(d), 339 -1, 3, and 343.

1 **TENTH COMPLETE AND/OR**
2 **PARTIAL AFFIRMATIVE DEFENSE**

3 38. Plaintiffs' claims are premature, as there is no substantial controversy
4 of sufficient immediacy to warrant judicial determination.

5 **ELEVENTH COMPLETE AND/OR**
6 **PARTIAL AFFIRMATIVE DEFENSE**

7 39. Plaintiffs' claims fail because of one of the following:

8 (a) The actions of Plaintiff Disney and the Walt Disney Company
9 (hereinafter, collectively, "Disney") in connection with the Termination Notices
10 and Disney having announced that it no longer intends to pay Slesinger royalties
11 effective November 4, 2004, represent a repudiation and anticipatory breach of the
12 1983 Agreement giving Slesinger the right to terminate all future rights of plaintiff
13 Disney thereunder and to recapture and exploit such rights;

14 (b) Even if the Court deems the Termination Notices to be effective,
15 plaintiff Disney, and/or any other related entity would remain legally and
16 equitably obligated to pay to Slesinger the royalties provided for under the 1983
17 Agreement;

18 (c) Disney violated its fiduciary and/or other obligations to Slesinger in
19 inducing attorney Michael Joseph Coyne ("Coyne"), purportedly acting on Milne's
20 behalf, and Hunt to serve the Termination Notices and in entering into its
21 surreptitious agreements with Coyne and Hunt, to appropriate to itself, without
22 payments to Slesinger, the very rights Slesinger obtained from the Pooh Properties
23 Trust, which Disney had agreed to exploit and for which it agreed to pay royalties;

24 (d) By reason of Disney's fraudulent and inequitable conduct, even if the
25 Termination Notices were deemed effective, any such terminated rights which
26 Disney acquires for itself, and the proceeds thereof, would be held by Disney in
27 actual or constructive trust for the benefit of Slesinger;

1 (e) Hunt has no right to exercise any right of termination under 17 U.S.C.
2 § § 304(c) or (d) of the United States Copyright Act, but even if they were held to
3 have such a right, Disney's inducing Coyne, purportedly acting on Milne's behalf,
4 and Hunt to bring about such a termination would be a tortious interference with
5 Slesinger's rights under contract;

6 (f) Hunt has no right to exercise any right of termination under 17 U.S.C.
7 § § 304(c) or (d) of the United States Copyright Act, because the illustrations in
8 question were works made-for-hire;

9 (g) Hunt has no right to exercise any right of termination under 17 U.S.C.
10 § § 304(c) or (d) of the United States Copyright Act, because Hunt agreed to the
11 1983 Agreement, either directly or through an agent, and therefore cannot now
12 claim that a revocation and regrant is not operative;

13 (h) Under Cal. Evid. Code § 622, plaintiffs are prohibited from
14 contradicting, inter alia, those recitals in the 1983 Agreement providing that the
15 1930 Grant was revoked and a new grant made; and

16 (i) Under Cal. Civ. Code § 3521, plaintiffs cannot accept the benefits of
17 the transaction provided to them by the 1983 Agreement (e.g., the rights), without
18 bearing the burden of that transaction (e.g., the royalty obligations).

19 **TWELFTH COMPLETE AND/OR**
20 **PARTIAL AFFIRMATIVE DEFENSE**

21 40. Plaintiffs fail to state a claim because the 1930 Grant that plaintiffs
22 allege will be terminated by the Termination Notices was not principally a grant of
23 any rights under copyright and thus is not eligible for termination under Section
24 304 of the United States Copyright Act.

1 **THIRTEENTH COMPLETE AND/OR**
2 **PARTIAL AFFIRMATIVE DEFENSE**

3 41. Because the various paragraphs of plaintiffs' First Amended
4 Complaint do not comply with FED. R. Civ. P. 8(a) and (e), Slesinger is not
5 required to separately admit or deny each averment contained therein.
6

7 FOR THESE REASONS, Slesinger prays that the Court dismiss all of
8 plaintiffs' claims and find for Slesinger on all counts, that Slesinger be awarded its
9 costs, including reasonable attorneys' fees under Section 505 of the United States
10 Copyright Act, and prays for such other and further relief as this Court deems just
11 and proper.
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COUNTERCLAIMS

I. INTRODUCTION

1. Winnie-the-Pooh is instantly recognized throughout the world by his rounded-yellow body and red shirt. Every year, he becomes more and more popular through the selling of toys, clothing, novelties, and other products, services, and commercial uses. Currently, it is estimated that Winnie-the-Pooh brings in billions of dollars in annual income.

2. The initial belief that Winnie-the-Pooh and his friends, as Milne's literary characters, could be successfully developed into distinctive and colorful graphic characters and personalities, marketed internationally as characters outside of books, belongs to a single man, Stephen Slesinger.

3. In 1930, Stephen Slesinger obtained, *inter alia*, rights to Winnie-the-Pooh in the United States and Canada from the author, A.A. Milne. At the time he transferred these rights, A.A. Milne represented that the rights "are absolutely and exclusively owned by him, free and clear of any rights or claims of rights of any other person."

4. After Stephen Slesinger transferred these rights to Defendant and Third-Party Plaintiff Stephen Slesinger, Inc. ("Slesinger"), he transformed Winnie-the-Pooh and his friends from a series of black and white drawings into the colorized bear and his friends, all well-known and loved throughout the world. With vision and determination, Slesinger used marketing and character development skills and developed Winnie-the-Pooh and his friends into successful merchandising properties, in many product lines and services, and protecting these product lines and services through intellectual property rights and contract rights (the "Pooh Brand"). The Pooh Brand includes products or services that employ or use (or are taken from or based upon) characters, materials, or titles developed by A.A. Milne or Slesinger, or by authority of A.A. Milne or Slesinger.

1 5. Following Slesinger's successful efforts, in 1961 Disney entered into
2 agreements with Slesinger, A.A. Milne's widow, and A.A. Milne's estate to
3 obtain, among other rights, the right to market this successful brand. In 1983, the
4 parties revoked the 1930 Agreement and the 1961 Agreement and entered into a
5 new agreement.

6 6. Rather than dealing fairly and honestly with Slesinger since executing
7 the 1983 Agreement, Disney has intentionally and continuously failed to properly
8 accumulate, calculate, and pay royalties to Slesinger, failed to report on gross
9 receipts without deduction, intentionally and continuously failed to report royalties
10 in a timely manner, engaged in unauthorized uses of Slesinger's intellectual
11 property, tried to interfere with Slesinger's rights to receive royalties and to make
12 false claims about its role in creating the Winnie-the-Pooh characters known
13 today.

14 7. This lawsuit seeks a determination of the appropriate rights owned by
15 the respective parties and to recover substantial damages for the wrongs of Disney
16 and its co-conspirators, including, but not limited to, copyright, trademark, and
17 trade dress infringement.

18 **II. JURISDICTION AND VENUE**

19 8. The Court has subject matter jurisdiction over this action pursuant to
20 28 U.S.C. §§ 1331 and 1338. This Court also has original jurisdiction pursuant to
21 28 U.S.C. §1332(a), as this controversy exceeds the value of \$75,000 and is
22 between citizens of different states. The Court has supplemental jurisdiction over
23 Slesinger's state law claims pursuant to 28 U.S.C. §1367.

24 9. Venue is proper in this District pursuant to 28 U.S.C. §§1391(b),
25 1391(c), and 1400(a). The Disney Counter-Defendants are headquartered and/or
26 perform business in this District. A substantial part of the events, acts, omissions,
27 and transactions complained of herein occurred in this District.

1 **III. THE PARTIES**

2 10. Counter-Claimant Stephen Slesinger, Inc. ("Slesinger") is a New
3 York corporation with its principal place of business in the Florida. Among other
4 activities, Slesinger is in the business of licensing rights in fictional characters.

5 11. Counter-Defendant Disney Enterprises, Inc. is a Delaware corporation
6 with its principal place of business in Burbank, California.

7 12. On information and belief, Counter-Defendant Walt Disney
8 Productions changed its name in 1986 and is now called Disney Enterprises, Inc.

9 13. Counter-Defendant The Walt Disney Company is a Delaware
10 corporation with its principal place of business in Burbank, California.

11 14. On information and belief, The Walt Disney Company owns 100% of
12 the stock and/or is the alter ego of Disney Enterprises, Inc. Hereinafter, Counter-
13 Defendants The Walt Disney Company, Walt Disney Productions, and Disney
14 Enterprises, Inc. will be referred to collectively as "Disney."

15 15. In its complaint in this action, Disney claims that it has the right to
16 enforce the Termination Notice served on Slesinger in November of 2002 by
17 Third Party Defendant Minette Hunt (the "Hunt Termination Notice"). The Hunt
18 Termination Notice was filed with the United States Copyright Office by Hunt's
19 agents, who were located in California.

20 16. Third Party Defendant Harriet Jessie Minette Hunt ("Hunt") is a
21 resident and citizen of the United Kingdom and purports to be the sole living
22 grandchild of Ernest H. Shepard ("Shepard"). Shepard created certain black-and-
23 white illustrations of Winnie-the-Pooh and his friends.

24 17. At all relevant times, each Counter-Defendant was and is the agent of
25 each of the remaining Counter-Defendants, and in doing the acts alleged herein,
26 was acting within the course and scope of such agency. Each Counter-Defendant
27 ratified and/or authorized the wrongful acts of each of the other Counter-
28 Defendants.

1 **IV. FACTUAL BACKGROUND**

2 **A. THE POOH FAMILY OF CHARACTERS ARE BORN**

3 18. In 1921, A.A. Milne ("Milne") gave his son, Christopher Robin
4 Milne, a bear for Christopher's first birthday. His son and the bear later became
5 the inspiration for Milne's writings about the character, Winnie-the-Pooh.

6 19. In 1923, Milne wrote a poem about Christopher Robin entitled
7 "Vespers." He told his wife, Daphne, that she could keep the money she received
8 from the sale of the "Vespers" poem. With the assistance of Tess Slesinger, Mrs.
9 Milne sold the poem to *Vanity Fair* magazine, where it was first published. The
10 "Vespers" poem became popular.

11 20. From 1924 to 1928, Milne published numerous poems and stories,
12 including the following four book-length collections about the adventures of
13 Winnie-the-Pooh, Christopher Robin, and their friends: *When We Were Very*
14 *Young*; *Winnie-the-Pooh*; *Now We Are Six*; and *The House at Pooh Corner* (the
15 "Pooh Books"). These works and further works or versions which employ, use,
16 are taken from, or based in whole or in part upon any of the characters, names,
17 materials, titles, scenes, symbols, dramatizations, songs, performances, or similar
18 matters which employ, use, or are taken from or based upon the several works or
19 any part thereof are hereinafter defined as the "Pooh Elements." In these
20 adventures, Winnie-the-Pooh was joined by his friends, Christopher Robin,
21 Eeyore, Piglet, Kanga, Tigger, Owl, Rabbit, and other characters (including, but
22 not limited to, Roo, Heffalump, Woozles, Rabbit and Relations) (the "Pooh Family
23 of Characters").

24 21. In the 1920s, the Pooh Elements were published with derivative
25 decorations created by several well-known illustrators.

26 22. Some derivative decorations in the Pooh Books were created by
27 Shepard. Shepard's derivative decorations showed the Pooh Family of Characters
28 in black-and-white drawings.

1 23. The Pooh Elements became popular in England and in the United
2 States. In the United States, early books were registered by Dutton Publishing in
3 the United States Copyright office and proper notice was provided by Dutton as
4 copyright registrant.

5 24. As of **1929**, the Pooh Family of Characters were known only in
6 Milne's black and white text and had not been developed outside of books and
7 magazines.

8 **B. BACKGROUND ON STEPHEN SLESINGER**

9 25. Stephen Slesinger was a successful publisher, producer, illustrator,
10 and writer. As of the **1930s**, he was the United States' most successful
11 representative of authors (including Edgar Rice Burroughs, Rex Beach, Will
12 James, Hendrik Wilhelm Von Loon) and newspaper syndicate comics (Bell
13 Syndicate, NEA Service, Publishers Syndicate, United Features). From the **1930s**
14 to the **1950s**, Stephen Slesinger controlled some of the most popular character
15 rights, including, without limitation: Tarzan, Buck Rodgers, Red Ryder, Alley
16 Oop, King of the Royal Mounted, and Og.

17 26. In the **1930s**, Stephen Slesinger was a pioneer in developing
18 comprehensive "character merchandising" plans, which included: artwork, product
19 design, franchising, product promotion, public relations, and advertising
20 coordination.

21 27. Throughout the **1930s**, **1940s**, and **1950s**, Stephen Slesinger also was
22 a media innovator (creating Telecomics films, a new film medium that featured
23 synoptic versions of popular children's books and comic attractions), president of
24 a motion picture production company (Telepictures, Inc., formed with the family
25 of Zane Grey), a film producer (including television credits), a journalist, and an
26 artist.

1 **C. INITIAL AGREEMENTS BETWEEN MILNE AND**
2 **SLESINGER**

3 28. In 1930, Stephen Slesinger crossed the Atlantic by boat from New
4 York to England to sign the contract with Milne because of his belief that Milne's
5 characters could be developed into a distinctive Pooh Brand, far beyond the black
6 and white pages of Milne's text, thereby increasing their popularity and value.

7 29. On **January 6, 1930**, Milne and Stephen Slesinger entered into a
8 written agreement (the "1930 Agreement") which, *inter alia*, granted Stephen
9 Slesinger "the sole and exclusive right, license and privilege" to use, develop, and
10 market the Pooh Family of Characters, the Pooh Elements, and any and all future
11 works dealing with the Pooh Family of Characters "in the United States of
12 America, its insular possessions, the Dominion of Canada and Nova Scotia."

13 30. In the 1930 Agreement, Milne represented and warranted that the
14 rights granted to Stephen Slesinger "are absolutely and exclusively owned by him,
15 free and clear of any rights or claims of rights of any other person."

16 31. The rights granted in the 1930 Agreement by Milne to Stephen
17 Slesinger included, but were not limited to, the following:

- 18 a. The "sole and exclusive right, license and privilege to use... the
19 name of the Author, the title of the said works, and the
20 characters therein, the drawings and illustrations in the said
21 several works and the right to have made other and further
22 drawings and illustrations portraying or reflecting actions of
23 the said several characters... including the right to use the same
24 in and for the purpose of advertising publicity and otherwise,
25 except as is herein specifically stated to the contrary";
- 26 b. The right to "sell or cause to be sold, as aforesaid, in interstate
27 and/or foreign commerce, some of the fabrics, things or
28 materials";

Did Milne
retain
rights? TM

Who controlled
nature and
quality?

Could it be terminated?
How long did it last?

In what name?

- 1 c. The "exclusive privilege of reproducing and/or using the rights,
- 2 privileges and licenses hereinbefore granted in any or every
- 3 material form as aforesaid, including the rights to grant and
- 4 license others..."; and
- 5 d. The right to be protected "from all claims which may be made
- 6 upon or taken against [Slesinger] on the ground that the said
- 7 illustrations and/or characters are the copyright or the property
- 8 of any other party...."

9 32. The 1930 Agreement provided that merchandise subject to trademark
10 rights was to be protected "under the Trademark Act of the United States of
11 America." Drawings or illustrations were to be protected by the proper copyright
12 notice or design patent.

13 33. Soon after Milne and Stephen Slesinger signed 1930 Agreement,
14 Stephen Slesinger assigned his interest in the 1930s Grant to Slesinger.

15 34. Over time, the 1930 Agreement was amended by other writings (the
16 1930 Agreement, as amended, is referred to herein as the "1930s Grant").

17 35. The 1930 Agreement was amended on **June 20, 1932** (the "1932
18 Amendment"). Through the 1932 Amendment, Milne and Slesinger anticipated
19 future uses of the Pooh Brand, including every type of technology in the future.
20 By the 1932 Amendment, Milne granted Slesinger "any and all rights and/or uses,
21 present and/or future, of radio reproduction, representation, broadcasting and/or
22 the like, as they exist or may exist under the laws of the United States of America,
23 its insular possessions, the Dominion of Canada and Nova Scotia...the sole and
24 exclusive rights for and the use thereof within the above-mentioned territorial and
25 geographical divisions and subdivisions and not elsewhere, to any and all use or
26 uses of the books referred to in the [1930 Agreement] and the various song books
27 or works published or to be published or issued, based on or adapted from them or
28 upon the literary works to be written in the future dealing with the characters

1 contained in those books, including readings, recitations, songs, dramatizations
2 and other performing rights over on or in connection with the radio, or any
3 adaptation or variation or extension thereof, or other mechanical sound, word,
4 and/or picture representation (or any combination thereof) such as any
5 broadcasting or representational device, wire, television, or other mechanical
6 instrument or devices or of any such future similar or allied devices.”

7 **D. STEPHEN SLESINGER POPULARIZES POOH**

8 36. At the time the 1930 Agreement was signed, the idea of creating a
9 licensing market for branded character merchandise was in its infancy. Licensing
10 is the business of granting rights to advertise, reproduce, and use a person or
11 character’s name and likeness in connection with another’s business, product or
12 service in a manner that enhances that business, product, or service. Consideration
13 for granting these rights is usually in the form of participation in the revenues that
14 result from the enhancement.

15 37. In a typical licensing transaction, the royalty base is the sales price of
16 an item, thing or service (such as food, merchandise, or entertainment) which is
17 “themed” with the name or likeness that has been licensed. Where a contract is
18 based on gross sales, the royalty percentage is usually lower, but no deductions are
19 permitted to be made by the licensor.

20 38. Stephen Slesinger was a pioneer in licensing and character
21 development, through marketing characters and increasing their popularity and
22 value. He transformed characters described in a book or magazine into graphic
23 and pictorial distinctive personalities, reproduced with thousands of impressions
24 in all of the then-existing media. He created new drawings, expanded and
25 dramatized stories, and made recordings with music and songs.

26 39. Slesinger developed the Pooh Brand by giving the Pooh Family of
27 Characters a distinctive richness and dimension outside of the Pooh Elements. For
28 35 years, Slesinger engaged in a pioneering character development and

1 merchandising campaign with a wide variety of toys, games, apparel, story and
2 song recordings (with actors Jimmy Stewart and Gene Kelly), radio performances,
3 and marionette performances that brought the Pooh Family of Characters to life.
4 Slesinger transformed Milne's black and white books into colorful "American"
5 characters in children's theater, radio, film, and character branded merchandise.

6 40. As of **June 1931**, after Slesinger had been marketing the Pooh for 18
7 months, *Playthings Magazine* reported that the Pooh Family of Characters
8 generated \$50,000,000 in revenue. In 1938, seven years later, *Playthings*
9 *Magazine* reported that Mickey Mouse reported \$38,000,000 in revenue.

10 41. Stephen Slesinger took out design patents for some of his work.
11 Examples of Slesinger's design patents are attached hereto as **Exhibit 1** and
12 incorporated herein by this reference.

13 42. Stephen Slesinger began using images and names of the Pooh Family
14 of Characters in connection with numerous items for which he took out
15 trademarks. Examples of these trademarks are attached hereto as **Exhibit 2** and
16 incorporated herein by this reference.

17 43. Slesinger's licensees included prominent toy, food, garments and
18 accessories, manufacturers, and radio and television networks. Slesinger paid a
19 significant portion of the monies to Milne. The Pooh Family of Characters and the
20 Pooh Brand, as modified and developed by Slesinger, were distinctive and
21 instantly recognizable by children and adults as the Pooh Family of Characters.
22 Examples of Slesinger's efforts to develop the Pooh Brand are attached hereto as
23 **Exhibit 3** and incorporated herein by this reference.

24 **E. SHIRLEY SLESINGER LASSWELL CONTINUES TO**
25 **DEVELOP THE POOH FAMILY OF CHARACTERS**

26 44. In **1953**, Stephen Slesinger passed away. Subsequently, his widow,
27 Shirley Slesinger Laswell, took over as President of Slesinger. With her creative
28 mind and business talents, Mrs. Slesinger worked to license the Pooh Brand to

1 coloring-book publishers, children's clothiers, and stuffed animal makers. Mrs.
2 Slesinger created a new, fresh look. Her new artwork and ideas came from the
3 perspective of a mom, and she developed the products she wanted herself.

4 45. Slesinger searched for the best manufacturers and the finest quality of
5 products and services. In 1963, the New York Times described the Slesinger
6 developed Pooh brand as "... not only a toy bear, but an industry..."

7 46. During the late 1950s to early 1960s, Slesinger's "Wonderful World
8 of Winnie the Pooh" promotions appeared at major department stores across the
9 country, including Bergdorf's, Saks, Filene's of Boston, Neiman Marcus, Marshall
10 Fields, I. Magnin and FAO Schwartz. Even the children of President John F.
11 Kennedy owned finely embroidered Pooh clothing, imported from Switzerland and
12 licensed exclusively by Slesinger.

13 47. As a result of Slesinger's nationwide licensing efforts, it substantially
14 increased the popularity of the Pooh Brand and its value to Milne and Slesinger.
15 Slesinger's Winnie-the-Pooh, a rounded golden bear with a bright red shirt, and
16 Slesinger's classical version with softer colors and distinctive designs, became
17 immediately identifiable to the public. Slesinger had created a distinctive
18 appearance for the Pooh Family of Characters which included their shape, color,
19 and accessories.

20 **F. SLESINGER AND DISNEY: THE 1961 AGREEMENT**

21 48. In the late 1950s or early 1960s, Mrs. Slesinger was working on
22 developing Slesinger's television rights in the Pooh Brand. In the course of these
23 efforts, she met Walt Disney. Walt Disney represented to her that Disney could
24 make the Pooh Family of Characters even more popular if Slesinger would grant
25 Disney rights to them. Walt Disney promised Mrs. Slesinger that she would "never
26 be sorry" if she entered into a contract with Disney. Walt Disney went to great
27 lengths to convince Mrs. Slesinger that she could trust both himself and the entire
28 Disney organization.

1 49. Mrs. Slesinger trusted Walt Disney and in relied on his promises, in
2 agreeing with enthusiasm when Walt Disney wanted to develop Slesinger's
3 television rights.

4 50. On **June 14, 1961**, Slesinger entered into a written agreement with
5 Disney (the "1961 Disney Agreement"). In the 1961 Disney Agreement, Slesinger
6 granted to Disney the right to exploit, and to license to others to exploit, certain
7 rights in the Pooh Brand in specific media in the United States and Canada.

8 51. In **1961**, Disney acquired from Slesinger certain of Slesinger's rights
9 in a fully developed intellectual property and brand.

10 52. In return for this grant of rights under the 1961 Disney Agreement,
11 Disney specifically agreed to pay Slesinger royalties equal to 4% of gross receipts
12 actually received by Disney, its affiliates, and others acting in its behalf from
13 commercial exploitation of the Pooh Brand throughout the world.

14 53. Simultaneously, Dorothy Daphne Milne, the widow of Milne, acting
15 both individually and as co-executor of A.A. Milne's will (Milne had died in
16 **1956**), and Spencer Curtis-Brown, as co-executor of A.A. Milne's will
17 (collectively the "Milne Estate"), entered into an agreement with Disney to grant
18 Disney certain rights (the "1961 Milne Agreement"). Disney agreed to pay the
19 executors of the Milne Estate royalties equal to 2.5% of gross receipts actually
20 received by Disney and others acting in its behalf from commercial exploitation of
21 the Pooh Brand throughout the world.

22 54. In the 1961 Milne Agreement, Dorothy Daphne Milne and the Milne
23 Estate represented and warranted that: (a) Milne "is the sole author of the work;
24 that said work is original with [Milne] in all respects, that no incident therein
25 contained and no part thereof is taken from or based upon any other work of any
26 kind, except works in the public domain, or in any way infringes upon the
27 copyright or any other right of any individual, firm, person or corporation...."; and
28

1 (b) the Milne Estate had the sole and exclusive right to dispose of each and every
2 right granted or purported to be granted to Disney.

3 55. In entering into the 1961 Disney Agreement, Slesinger relied upon
4 the representations and warranties of Dorothy Daphne Milne and the Milne Estate
5 contained in the 1961 Milne Agreement.

6 56. By virtue of the 1961 Disney Agreement and the 1961 Milne
7 Agreement, the Milne Estate received royalties based both on the rights granted by
8 Dorothy Daphne Milne and the Milne Estate, and the rights granted by Slesinger
9 to Disney. Likewise, Slesinger received royalties based both on the rights granted
10 by Dorothy Daphne Milne and the Milne Estate, and on the rights granted to
11 Slesinger to Disney. Because the rights granted by Slesinger to Disney were more
12 valuable, Slesinger received 4% of the 6.5% royalty base and the Milne Estate
13 received 2.5% of the 6.5% royalty base.

14 57. At Disney's request, Slesinger directed the Pooh Brand for several
15 years after the 1961 Agreement was executed. At the same time, Slesinger
16 provided materials and designs to assist Disney in the development of its motion
17 picture version and its own marketing campaigns. Slesinger's efforts continued
18 until 1966, when Disney released its first movie based on the Pooh Family of
19 Characters, "Winnie the Pooh and the Honey Tree." Disney continued to develop
20 the Pooh Brand based on Slesinger's artwork, trademarks, and marketing efforts.

21 58. Pursuant to an assignment dated **May 25, 1972**, the rights of the
22 Milne Estate in the Pooh Elements were transferred to the trustees of the Pooh
23 Properties Trust, a trust organized under the laws of England and Wales. The
24 Trustees of the Pooh Properties Trust shall be referred to hereinafter as the "Pooh
25 Properties Trustees."
26
27
28

1 **G. UNDERPAYMENTS BY DISNEY ARE EXPOSED AND THE**
2 **PARTIES ENTER INTO THE 1983 AGREEMENT**

3 59. In the **late 1970s and early 1980s**, Slesinger discovered issues
4 concerning the 1961 Disney Agreement in various ways, including by failing to
5 pay the appropriate share of royalties due Slesinger. Disney had expanded its
6 business without implementing the necessary accounting controls needed to
7 separately and accurately accumulate and report royalties owed to Slesinger and
8 the Pooh Properties Trust. As a result, Disney had failed to report Disney's retail
9 and wholesale sales and had allowed its licensees and foreign offices to
10 commingle their accounting. This "lump sum" reporting practice made it
11 impossible to determine the amount of revenue related to Pooh from the amount of
12 revenue unrelated to Pooh.

13 60. Further, in contravention of the 1961 Disney Agreement, Disney and
14 its licensees were failing to segregate revenues from products and services based
15 on the Pooh Family of Characters from products and services based on other
16 Disney characters, and under-allocating the share attributable to the Pooh Family
17 of Characters on which Slesinger's share was based.

18 61. After Slesinger's discovery of Disney's breaches of contract,
19 Slesinger and Disney entered into settlement negotiations.

20 62. In **1980**, Slesinger representatives met with a Disney Senior Vice
21 President, Vincent H. Jefferds. Jefferds threatened that the copyright in Pooh was
22 in the public domain. Jefferds also threatened that if Slesinger told the Milne
23 Estate about Disney's royalty reporting failures, Jefferds would tell the Milne
24 Estate that Slesinger was making trouble and encourage the Milne Estate to
25 recapture the original 1930s Grant, using a recent provision of the 1976 Copyright
26 Act. Lastly, Jefferds threatened that if Slesinger did not agree to modify the 1961
27 Disney Agreement by reducing the royalty stream to 2.5% of 50% of retail and
28 wholesale sales across the board on licensing, he would pull all Pooh products

1 from Disney theme parks. Jefferds said that Disney had a captive audience at the
2 theme parks who would buy whatever he was selling there.

3 63. Over the next three years, Slesinger, the Pooh Properties Trustees,
4 and Disney discussed the monies due and owed by Disney to the Milne Estate and
5 Slesinger, as well as other issues between them. In the course of these
6 discussions, the parties negotiated a general royalty of 7.5% for all of the items,
7 things, and services commercially exploited. This 7.5% royalty was then split 5%
8 to the Pooh properties Trust and 2.5% to Slesinger. From this 7.5% royalty base,
9 Disney then negotiated discounts for specific items which Disney claimed bore
10 higher costs that could not be deducted. Unless an item was specifically
11 negotiated, there was to be no deduction on the 7.5% royalty base.

12 64. In April 1983, Slesinger entered into an agreement with Walt Disney
13 Productions, the Pooh Properties Trust, the Pooh Properties Trustees, and
14 Christopher R. Milne (the "1983 Agreement"). The 1983 Agreement was drafted
15 primarily by Peter Nolan, an attorney for Disney. A true and correct copy of the
16 1983 Agreement is attached hereto as **Exhibit 4**. At that time, Disney settled the
17 past disputes concerning money due and owed to Slesinger in a separate release,
18 where Disney warranted that it has made complete disclosures to Slesinger.

19 65. As a material part of the 1983 Agreement, the Pooh Properties
20 Trustees represented that the Pooh Properties Trust was "the owner of the
21 copyrights to the Pooh Properties and the benefits of the [1930s Grant]."

22 66. As a material part of the 1983 Agreement, the Pooh Properties
23 Trustees represented that, "[t]o the best of the knowledge of the Trustees, they are
24 the only party that owns the rights granted" to Slesinger "pursuant to the now
25 revoked agreement dated 6 January 1930, as amended from time to time" and "that
26 they have the right to grant such rights."

27 67. As a material part of the 1983 Agreement, the Pooh Properties
28 Trustees represented and warranted "that they are aware of no other party who

owns said rights and that they have not transferred said rights to any party other than Slesinger.”

68. In the 1983 Agreement provides, in part, as follows:

- a. The 1930s Grant was revoked and a new grant of rights was made to Slesinger;
- b. The 1961 Disney Agreement was revoked and a new grant of rights was made by Slesinger to Disney relating to the Pooh Elements;
- c. Disney promised to pay and account properly and separately for royalties derived from exploitation of the Pooh Elements and the Pooh brand;
- d. Christopher R. Milne acknowledged that the 1930s Grant to Slesinger could no longer be terminated by him; and
- e. Slesinger agreed to decrease its share of the royalties from 4% to a range from 50% of 1.33% to 2.5%, in favor of the Milne family, based upon Disney’s promise that it would properly pay what was rightfully due Slesinger.

69. Thus, the 1983 Agreement consisted of two agreements: a grant to Slesinger and then a license from Slesinger to Disney.

70. Consistent with the royalty arrangement described above, Disney and the Pooh Properties Trustees entered into an amendment to the 1961 Milne Agreement, dated March 31, 1983 (the “1983 Trustees Amendment”), which increased the royalty percentage payable to the Pooh Properties Trustees by Disney from 2.5% to a range of 50% of 2.67% to 5%.

71. Under paragraph 10 of the 1983 Agreement, the basis for computing royalty amounts payable to Slesinger is the gross amounts actually received by Disney, an affiliated company, or any person or party in its behalf, from the manufacture, publication, sale, and/or other commercialization anywhere in the

1 world and/or from the lease or license to manufacture, publish, sell and/or
2 otherwise commercially to exploit anywhere in the world on any and all items,
3 things, or services “which employ or use or which are taken from or which are
4 based upon any of the characters, material or titles of the work or any part thereof,
5 and/or which employ or use or are taken from or based upon any of the characters,
6 material or title(s) of any of Disney’s motion picture, television or other versions,
7 adaptations or treatments of the work or any part thereof,” subject to specified
8 exceptions.

9 72. A **March 20, 1984** letter from Michael Brown, a Trustee, to Slesinger
10 confirms that the Trustees and Slesinger will always share anything from Disney
11 according to a two-third/one-third split.

12 **H. DESPITE ITS PROMISES AND AGREEMENTS, DISNEY**
13 **CONTINUES TO UNDERPAY SLESINGER AFTER THE 1983**
14 **AGREEMENT**

15 73. Although it had been caught underpaying royalties on the Pooh
16 Family of Characters and had promised to properly account for and pay royalties
17 in the future, Disney almost immediately began cheating again and underpaying
18 Slesinger.

19 74. Beginning in **1989**, inconsistencies in Disney’s royalty statements and
20 representations arose when Disney stopped reporting previously reported items,
21 things and services. Thereafter, Slesinger discovered that Disney had continued to
22 permit commingling and under-reporting and was conducting business without the
23 necessary accounting controls.

24 75. In **1991**, Slesinger filed suit in California state court against Disney
25 (the “1991 State Court Action”). In **March, 2004**, the 1991 State Court Action
26 was dismissed by court order. (The judgment dismissing the 1991 State Court
27 Action is currently on appeal.)

28 76. There was no final adjudication of the merits in the 1991 State Court
Action and the 1991 State Court Action does not preclude the claims herein stated.

1 77. Disney continued and is continuing its under-reporting of amounts
2 owed to Slesinger.

3 **I. DISNEY IMPROPERLY USES THE COPYRIGHT ACT TO**
4 **ATTEMPT TO CUT OFF SLESINGER'S RIGHTS**

5 78. Upon information and belief, Clare Milne is the sole grandchild of
6 Milne. Upon further information and belief, Clare Milne is disabled since birth
7 and her affairs are managed by an appointed receiver.

8 79. Upon information and belief, the receiver for Clare Milne for many
9 years was Michael Brown ("Brown"). Upon information and belief, Michael
10 Brown was succeeded in 2002 as Clare Milne's receiver by Michael Joseph Coyne
11 ("Coyne"), a partner in Brown's law firm. The acts attributed to Clare Milne were
12 performed by and through her then-appointed receiver, either Brown or Coyne.

13 80. By 1997, Disney had entered into negotiations with Michael Brown
14 (who was then serving as Clare Milne's receiver, as well as Trustee and attorney
15 for the Pooh Properties Trustees) to try to cut off Slesinger's rights in and to the
16 Pooh Elements and to its royalty payments under the 1983 Agreement.

17 81. One result of these negotiations was a **March 6, 2001** Assignment of
18 Copyright and Ancillary Rights in the Pooh Elements (the "2001 Buyout
19 Agreement"). The parties to the Buyout Agreement included, but were not limited
20 to, Disney, the Pooh Properties Trustees, Clare Milne, and Hunt.

21 82. The 2001 Buyout Agreement was produced by Disney in this Action
22 as a confidential document, subject to the terms of a protective order. Slesinger is
23 limited as to its public allegations concerning the 2001 Buyout Agreement.

24 83. By the 2001 Buyout Agreement, the Pooh Properties Trustees, Clare
25 Milne, and Hunt, among others (collectively, the "Assignors") assigned to Disney
26 all their intellectual property rights in the Pooh Elements and the sole and
27 exclusive right to use, market, distribute, or otherwise exploit the Pooh Elements.
28 The Assignors kept certain rights for themselves, including, but not limited to,

1 existing publishing arrangements and the benefit of all contracts not assigned to
2 Disney (the "Reserved Rights").

3 84. Yet Disney was not satisfied with getting these rights from the
4 Assignors, and attempted to terminate its obligations to Slesinger. The 2001
5 Buyout Agreement and its related transactions were part of a scheme by Disney to
6 stop paying any royalties to Slesinger and to strip Slesinger of its rights, thereby
7 gaining an advantage in the then-pending State Court Action.

8 85. The Sonny Bono Copyright Act only permits certain rights under the
9 United States Copyright Act to be recaptured by certain qualified heirs. In
10 connection with Disney's termination scheme, Disney knew that these rights were
11 not a material part of the rights granted by Slesinger to Disney under the 1983
12 Agreement. Yet Disney sought to use the Sonny Bono Copyright Act to obtain all
13 of Slesinger's rights under the 1983 Agreement. Disney engaged in this scheme
14 by manipulating Clare Milne and Hunt to seek to recapture rights from Slesinger
15 and by seeking to terminate the 1983 Agreement as a matter of law.

16 86. In its **May 2002** Securities and Exchange Commission ("SEC") 10-Q
17 filing Disney admitted that, "if each of [Slesinger's] claims were to be confirmed
18 in a final judgment, damages as argued by the plaintiff could total as much as
19 several hundred million dollars and adversely impact the value to [Disney] of any
20 future exploitation of the licensed rights." The May 2002 Form 10-Q disclosure
21 resulted in a substantial decline in Disney's stock price: almost 25% over the next
22 three months.

23 87. Disney reiterated this admission in its 2002 SEC Form 10-K filing.
24 Disney's 2002 SEC Form 10-K filing also stated that there were ten class action
25 lawsuits against Disney for failing to disclose "the pendency and potential
26 implications of the [State Court Action] prior to [Disney's] filing of its quarterly
27 report on Form 10-Q in May 2002. The plaintiffs claim that this alleged
28

1 nondisclosure constituted a fraud on the market that artificially inflated [Disney's]
2 stock price."

3 88. In order to improve its position with investors, Disney induced Clare
4 Milne and Hunt to serve notices of termination ("Termination Notices") allegedly
5 pursuant to 17 U.S.C. § 304(d) and purportedly to terminate Slesinger's rights
6 under the United States Copyright Act in specific Pooh Books.

7 89. Disney induced Clare Milne and Hunt to serve the Termination
8 Notices. Disney acted with the assistance of Brown, a Trustee of and legal
9 counsel to the Pooh Properties Trust who was working as a dual agent paid by
10 Disney.

11 90. On **November 1, 2002**, Clare Milne, through her Receiver, and Hunt
12 entered into an agreement whereby Hunt authorized Clare Milne to enter into a
13 reversion agreement with Disney, conveying to Disney the rights to be recaptured
14 from Slesinger pursuant to the purported Termination Notices, and Clare Milne
15 agreed to pay 15% of the net amount of any payments she receives from Disney
16 pursuant to such reversion agreement.

17 91. On **November 4, 2002**, Clare Milne and Hunt, by and through their
18 respective agent in California, each purported to serve a Termination Notice on
19 Slesinger. These Termination Notices are invalid and are the subject of Disney's
20 affirmative claims in this Action.

21 92. In an agreement dated **November 4, 2002**, Disney, Clare Milne, by
22 and through Coyne as her receiver, and Coyne in his individual capacity, entered
23 into an agreement (the "Milne Reversion Agreement") under which Clare Milne
24 purported to grant Disney certain rights. A true and correct copy of the Milne
25 Reversion Agreement is attached hereto as **Exhibit 5**.

26 93. In the Milne Reversion Agreement, Clare Milne purported to grant
27 Disney rights allegedly terminated by the Milne Notice in the United States
28 effective on **November 5, 2004** (the "Grantor Reverted Rights"). The Grantor

1 Reverted Rights are not defined anywhere in the Milne Reversion Agreement.

2 94. Clare Milne further purported to grant Disney certain Additional
3 Rights. In contrast to the vague description of the Grantor Reverted Rights, the
4 Additional Rights are described in great detail. Slesinger hereby directs the Court
5 to the language of Paragraph 2.1.2 of the Milne Reversion Agreement (**Exhibit 5**).

6 95. The term "Additional Rights" does not describe rights that could be
7 recaptured under the Sonny Bono Copyright Act. However, the term "Additional
8 Rights" defines Slesinger's rights because the Assignors had transferred all other
9 rights to Disney under the 2001 Buyout Agreement. Given the ambiguity as to the
10 scope of the "Additional Rights," this Court should declare the transfer of these
11 rights has not been effected and that Slesinger retains these Additional Rights.

12 96. Under the Reversion Agreement, Clare Milne was contractually
13 obligated to take steps requested by Disney in connection with attempting to
14 terminate Slesinger's rights, as long as Disney paid her, indemnified her, and paid
15 all of her costs in any litigation involving Slesinger. In executing and serving the
16 Termination Notices, Clare Milne was acting solely at Disney's behest.

17 97. On **November 4, 2002**, Hunt irrevocably assigned to Disney all
18 rights in United States and its territories "that I may possess" on **November 5,**
19 **2004** in and to the Pooh Elements (the "Hunt Assignment"). However, Hunt
20 explicitly did not warrant or represent that she will possess any of the rights
21 purportedly assigned as of **November 5, 2004**.

22 98. This Court has already held that the Milne Notice is invalid as a
23 matter of law. The Ninth Circuit has affirmed the holding, and the U.S. Supreme
24 Court in **June 2006** denied Milne's writ of petition for certiorari.

25 **J. THE POOH BRAND IS CRITICAL TO DISNEY'S BUSINESS**

26 99. Winnie-the-Pooh is a significant piece of Disney's business. The
27 Pooh Family of Characters generate at least as much annual revenue for Disney's
28 Consumer Products Division as does Mickey Mouse. According to the Disney

1 web site, the Pooh Family of Characters are in every business segment of the
2 company (Consumer Products, Parks & Resorts, Studio Entertainment, Media
3 Networks, and Corporate). Studio Entertainment develops characters and stories
4 via movies, television, and music, and distributes these products and services; the
5 Parks & Resorts Group allows a direct interaction with the characters and stories
6 through its function as a vacation destination; Consumer Products licenses
7 intellectual property to various manufacturers and distributors of apparel, toys, and
8 other goods, while also selling these items, things, and services through its own
9 outlets; Media Networks uses television and radio network ownership for display
10 of and advertising revenue based on the characters and stories; and Corporate
11 manages these enterprises, strategic alliances, revenue shifting, and deferral of
12 royalty bearing revenues, and the relationship with shareholders.

13 100. Stock market analysts have indicated that "Any positive
14 announcements regarding the Winnie the Pooh litigation [with Slesinger]... will
15 lead to an increase" in the overall valuation of Disney.

16 101. On **November 5, 2002**, the day after the service of the Termination
17 Notices, Disney caused the media to report on the alleged effect of the
18 Termination Notices on Slesinger's rights. Disney falsely represented to the press
19 that, based on the Termination Notices, the Slesingers were "out" with respect to
20 Winnie-the-Pooh after **November 2004**.

21 102. The Disney executive team – Bob Iger, Tom Staggs, Peter Murphy,
22 and Lou Meisinger – knew at the time that the above statement was false and
23 misleading and that the Termination Notices were invalid, and, even if they were
24 valid, they would not eradicate Slesinger's full entitlement to continuing royalties.
25 Disney's press statements were intended to give Disney shareholders a false sense
26 of security of Disney's rights to use the Pooh Family of Characters and the Pooh
27 Brand.

1 103. News regarding Winnie-the-Pooh dramatically affects Disney's stock
2 price. The day after Disney's **November 5, 2004** press statements that falsely
3 announced that the Slesingers "are out" after **November 2004**, Disney's stock
4 price rose by \$1.02 from \$17.03 to \$18.05, or about 6%.

5 **K. DISNEY'S IMPROPER ROYALTY STATEMENTS**

6 104. Pursuant to its practices since 1983, Disney has paid Slesinger twice a
7 year purportedly for monies owed under the 1983 Agreement. Yet, during the
8 relevant time period of this Federal Action, Disney has failed to pay Slesinger
9 pursuant to the terms of the 1983 Agreement.

10 105. For example, in **May of 2006**, Disney sent the royalty statement for
11 the period ended **March 31, 2006** (the "March 31, 2006 Statement") The royalty
12 paid by Disney to Slesinger based on the March 31, 2006 Statement was
13 approximately 9% lower than the immediately prior period. This lower royalty
14 payment occurred even though during the period ending **March 31, 2006**, Disney
15 was heavily promoting Winnie-the-Pooh's 80th birthday celebration and opened a
16 theme park in Hong Kong featuring Pooh products and services. Rather than
17 decreasing, the income to Disney regarding the Pooh Brand has, in fact, been
18 increasing, and Disney has knowingly failed to pay Slesinger its share thereof.

19 106. In Asia, with one of the fastest growing populations in the world, the
20 Pooh Brand has become particularly popular. However, this popularity is not
21 reflected on Disney's royalty statements to Slesinger. As will be established at
22 trial, Disney continues to evade its obligations to pay Slesinger for the use of
23 authorized rights and to misappropriate Slesinger's rights in the Pooh Elements in
24 Asia as Disney has done historically throughout the rest of the world.

25
26
27 ///

28 ///

1 **V. CLAIMS FOR RELIEF**

2 **FIRST CLAIM FOR RELIEF**

3 **INFRINGEMENT OF RIGHTS**

4 **UNDER THE UNITED STATES COPYRIGHT ACT**

5 107. Slesinger incorporates by reference each of the paragraphs set forth
6 above as though fully set forth hereunder.

7 108. Among other rights, Slesinger is a grantee of a copyright owner, Pooh
8 Properties Trust, and its predecessors in title, for certain exclusive rights in and to
9 the Pooh Elements in the United States of America and its insular possessions for
10 and during the respective periods of copyright and of any copyright renewals.
11 Slesinger can seek redress for infringement of its rights under the United States
12 Copyright Act in and to the Pooh Elements.

13 109. The 1930s Grant, the 1983 Agreement, and the substantial work
14 performed by Slesinger from 1930 through the mid-1960's established the scope of
15 Slesinger's rights in the Pooh Family of Characters and the Pooh Brand.

16 110. Based on express representations and warranties of first Milne, then
17 Dorothy Daphne Milne and the Milne Estate, and then the Pooh Properties Trust
18 and the Trustees thereof, each of them, in chronological sequence, was the owner
19 of the copyrights to the Pooh Elements and the benefits of the 1930s Grant.

20 111. Based on express representations and warranties of Milne, Dorothy
21 Daphne Milne, the Milne Estate, the Pooh Properties Trust, and the Pooh
22 Properties Trustees, each of them in chronological sequence was then the only
23 party that owned rights granted to Slesinger and had the right to grant such rights.

24 112. Based on express representations and warranties of Milne, Dorothy
25 Daphne Milne, the Milne Estate, the Pooh Properties Trust, and the Pooh
26 Properties Trustees, each of them in chronological sequence was aware of no other
27 party who owned said rights and had not transferred said rights to any party other
28 than Slesinger.

1 113. At the time the Termination Notices were executed and served,
2 Disney knew that, by and through their predecessors in interest, Clare Milne and
3 Hunt had acknowledged Slesinger's rights as set forth in paragraphs 115 through
4 117, above.

5 114. At the time the Termination Notices were executed and served,
6 Disney knew that neither Clare Milne nor Hunt had a right to terminate.

7 115. At the time the Termination Notices were executed and served,
8 Disney knew that Clare Milne and Hunt were committing acts that infringed on
9 Slesinger's rights under the United States Copyright Act.

10 116. Though the 1983 Agreement involved the grants of many rights other
11 than rights under the United States Copyright Act, Disney, Clare Milne (through
12 her receiver, Coyne), and Hunt knowingly participated in an orchestrated plan to
13 create the illusion that the 1983 Agreement could be terminated under the United
14 States Copyright Act.

15 117. By executing and serving the Termination Notices, Disney, Clare
16 Milne (through her receiver, Coyne), and Hunt participated in a scheme intended
17 to destroy Slesinger's rights in and to the Pooh Elements and to receive benefits at
18 Slesinger's expense.

19 118. Disney has committed additional acts of copyright infringement. The
20 1983 Agreement conveys to Disney only those rights which are specifically set
21 forth therein. Slesinger retained all rights not expressly included in the rights
22 granted to Disney in the 1983 Agreement.

23 119. Disney's uses of Slesinger's rights under the United States Copyright
24 Act may not exceed the scope of the grant provided by the 1983 Agreement.

25 120. Disney has been exploiting the Pooh Family of Characters and the
26 Pooh Brand in mediums to which it did not receive rights under the 1983
27 Agreement. As a result, Disney has been infringing Slesinger's rights under the
28 United States Copyright Act.

1 121. Disney's uses of Slesinger's rights under the United States Copyright
2 Act beyond the express grants of the 1983 Agreement constitutes infringement of
3 Slesinger's rights under the United States Copyright Act.

4 122. As a direct and proximate result of Disney's copyright infringement,
5 Slesinger has been damaged within the meaning of 17 U.S.C. § 504(b) in an
6 amount according to proof.

7 123. Slesinger has been damaged in an amount according to proof or in the
8 statutory amount.

9 124. As a further proximate result of the infringement, Slesinger is
10 informed and believes that Disney has been unjustly enriched as a result of the
11 infringement of Slesinger's rights under the United States Copyright Act. The
12 amount of this unjust enrichment cannot presently be ascertained, but will be
13 proven at trial.

14 WHEREFORE, Slesinger prays for relief as set forth herein.

15 **SECOND CLAIM FOR RELIEF**

16 **TRADEMARK INFRINGEMENT**

17 125. Slesinger incorporates by reference each of the paragraphs set forth
18 above as though fully set forth hereunder.

19 126. Among other rights, Slesinger is an owner of rights in and to the Pooh
20 trademarks in the United States of America and its insular possessions (the
21 "Slesinger Trademark Rights"). The 1930s Grant, the 1983 Agreement, and the
22 substantial work performed by Slesinger from 1930 through the mid-1960's
23 established both that Slesinger has the right to secure trademarks for the Pooh
24 Family of Characters and the respective fabrics, things and materials sold and the
25 scope of Slesinger's Trademark Rights in the Pooh Family of Characters and the
26 Pooh Brand.

27 127. Pursuant to the 1930s Grant, Slesinger received rights to the Pooh
28 Elements, including the title, characters, drawings and illustrations therein.

1 128. Slesinger has valid protectable trademarks in "Winnie the Pooh,"
2 "Pooh," and "Christopher Robin" and has used these trademarks since the 1930s.

3 129. Slesinger can enforce any infringement of trademark rights in and to
4 the Pooh Elements, including the title, characters, drawings and illustrations
5 therein.

6 130. The 1983 Agreement established the scope of Disney's grant to use
7 Slesinger's Trademark Rights. All use by Disney has been pursuant to a license.
8 Slesinger licensed trademark rights to Disney because it knew of Disney's
9 reputation and ability to ensure quality products and services. Slesinger relied on
10 Disney's expertise in quality control.

11 131. By virtue of the 1983 Agreement, Disney implicitly acknowledged
12 that Slesinger had trademark rights and that Disney wanted to license those rights.

13 132. Disney has been exploiting the Pooh Family of Characters in
14 mediums to which it did not receive rights under the 1983 Agreement. Disney has
15 been diluting Slesinger's Trademark Rights without permission and in violation of
16 its Trademark Rights. These mediums include, but are not limited to: Internet use,
17 wireless use, advertising uses, credit cards, ringtones on mobile phones, greeting
18 cards, computer graphics, Internet computer games, computer screen savers,
19 computer wallpapers, character meals, convention services (such as the "Tigger
20 Award"), magazines, multi-media kits, and other products and services.

21 133. Disney's unauthorized use in the last four years has created confusion
22 in the marketplace about the source of the marks.

23 134. Disney has violated Section 43(a) of the Lanham Act, 15 U.S.C. §
24 1125, and the common law.

25 135. Disney's intentional and willful unauthorized uses of Slesinger's
26 Trademark Rights in connection with the sale, offering for sale, or distribution of
27 goods, entitles Slesinger to treble profits or damages, whichever is greater,
28

1 together with reasonable attorney's fees and prejudgment interest, according to
2 proof at the time of trial.

3 136. Disney's actions have been willful and malicious.

4 137. As a licensee of certain of Slesinger's Trademark Rights, Disney's
5 use of these rights inures to the benefit of Slesinger. Accordingly, any
6 registrations improperly obtained by Disney regarding the Slesinger Trademark
7 Rights belong to Slesinger. Slesinger therefore seeks a declaration from this Court
8 ordering the United States Patent and Trademark Office to correct the title of any
9 such trademark registrations to Slesinger.

10 WHEREFORE, Slesinger prays for relief as set forth herein.

11 **THIRD CLAIM FOR RELIEF**

12 **TRADE DRESS INFRINGEMENT**

13 138. Slesinger incorporates by reference each of the paragraphs set forth
14 above as though fully set forth hereunder.

15 139. A product or service's "trade dress" is its total image and overall
16 appearance; it includes a variety of elements in which a product is packaged or
17 service is presented, such as size, shape, color, color combinations, texture, or
18 graphics; the displays attending products or services; and even the decor or
19 environment in which a product or service is provided. Trade dress includes the
20 distinctive colors, packaging, or design of a product or service that promotes the
21 product or service and distinguishes it from other products or services in the
22 marketplace.

23 140. Slesinger created a distinct trade dress for the Pooh Brand, including
24 the size, shape and color of the Pooh Family of Characters so that the bear, donkey
25 pig, tiger, kangaroo, tiger, owl and rabbit that form the Pooh Family of Characters
26 are instantly recognizable and identifiable as the Pooh Family of Characters. The
27 Slesinger trade dress in the Pooh Brand possess inherent distinctiveness and/or has
28 obtained secondary meaning, particularly through the use of "Classic Pooh."

1 141. Further, Slesinger's trade dress for its classic children campaigns
2 involve distinctive colors, packaging, and design of the Pooh Family of Characters
3 and scenes which are used to promote Pooh products, services and displays. The
4 concepts for department store displays, Pooh corners, the use of certain types of
5 props, and the overall color of the displays, packaging, and designs, with
6 simplified light lines, pastel tones, signature pastel tones of yellow for Pooh and
7 the slightly faded softer treatment to the characters which Slesinger used to
8 promote and sell products and services in the marketplace and to promote items
9 are immediately distinguishable from other products in the marketplace. Even the
10 decor and environment Slesinger developed and Disney later adopted, in which
11 Disney's licensed products and services are part of the trade dress created by
12 Slesinger during the 35 years prior to the first Disney Pooh movie.

13 142. Disney's unauthorized use and misuse of the Pooh Family of
14 Characters and its recent introduction of a new female character into the Pooh
15 Family of Characters has led to confusion and will continue to lead to further
16 confusion about Slesinger's trade dress. Disney's actions are a violation of
17 Slesinger's trade dress rights. The confusion is compounded by Disney's false
18 statements to the public that it is the company responsible for Winnie-the-Pooh's
19 shape and red shirt. In fact, it was Slesinger, not Disney, that created the distinct
20 look of Winnie-the-Pooh's shape and his red shirt.

21 143. Over the last four years, as a result of Disney's unauthorized use of
22 Slesinger's trade dress in the Pooh Family of Characters, Slesinger has been
23 damaged in an amount to be proven at trial.

24 WHEREFORE, Slesinger prays for relief as set forth herein.

25 **FOURTH CLAIM FOR RELIEF**

26 **BREACH OF CONTRACT**

27 144. Slesinger incorporates by reference each of the paragraphs set forth
28 above as though fully set forth hereunder.

1 145. By way of this Fourth Claim for Relief, Slesinger is not asserting any
2 claims which it is estopped from bringing due to the 1991 State Court Action.

3 146. Pursuant to the 1983 Agreement, Slesinger has performed all
4 conditions, covenants and promises required on its part to be performed in
5 accordance with the terms and conditions of the 1983 Agreement.

6 147. During the relevant time, Disney has committed material breaches of
7 the 1983 Agreement by failing to properly accumulate, calculate and pay royalties
8 based upon gross amounts actually received by Disney, an affiliated company, or
9 by any person or party in its behalf.

10 148. Pursuant to paragraphs 10(a) and 10(b)(3), Disney is required to
11 report transactions on each sale by Disney, an affiliated company, or by any
12 person or party in its behalf. Further, Disney is required to calculate the royalty by
13 multiplying the actual sales price (or actual gross amounts) times the 2.5% royalty
14 without deduction, or times the applicable discounted royalty percentage in
15 paragraph 10(b)(3)(ii), (iii), (iv), and (v).

16 149. Pursuant to paragraph 10(b)(3)(v), the applicable royalty percentage
17 is 1.33% of 50% of the actual retail sales prices for certain sales by Disney and its
18 affiliates. This discount, which Disney specifically negotiated, was designed to
19 permit Disney to take 50% only for the purpose of offsetting the wholesale sale.

20 150. Disney negotiated the discounted royalty percentage because Disney
21 acknowledged that no deductions were permitted to be taken from the gross.
22 Because the 1983 Agreement required Disney to report 100% of the actual gross
23 amount, Disney wanted to pay a discounted royalty percentage.

24 151. For example, if an article is sold at wholesale for \$10 by a Disney
25 entity or authorized party to a Disney retailer, who then sells that same article at
26 retail for \$20, there are two royalty bearing revenue streams. As explained in
27 1983 by Disney representatives, wholesale sales always occur before the retail
28 sales and approximate 50% of retail sale prices. The Disney representatives said

1 that if Disney paid Slesinger a royalty on the \$10 wholesale sale and then a royalty
2 on the \$20 retail sale, Disney would be paying a royalty based on \$30 for an item
3 which only sold at retail for \$20. As a result, Slesinger agreed that Disney would
4 be permitted a 50% allowance for these specific retail sales.

5 152. Disney is deducting more than 50% from the retail sales and is not
6 reporting all of the wholesale sales which precede the retail sale.

7 153. Pursuant to paragraph 12 of the 1983 Agreement, Disney is failing to
8 report transactions to Slesinger within the six month reporting period. Each semi-
9 annual royalty statement must show "the amounts which become payable during
10 the preceding half [year] and showing how said amounts were computed." Disney
11 is failing to timely report the transaction, by shifting the transaction into various
12 financings and other costs (e.g., irrevocable advances and guarantees).

13 154. Pursuant to paragraph 3 of a side letter signed by Disney executive,
14 Vince Jefferds, and delivered in **April, 1983** (the "April 1983 Side Letter"),
15 Disney agreed to continue selling at retail and to notify Slesinger and the Pooh
16 Properties Trustees if Disney intended to cease such retail sales (and thereafter
17 renegotiate). Within the past three years, Disney has ceased retail sales without
18 notification and without good faith renegotiation, all in contravention of the April
19 1983 Side Letter.

20 155. Slesinger is informed and believes that Disney is calculating and
21 reporting royalties, in whole or in part, not in accordance with the 1983
22 Agreement but pursuant to the terms of the Milne Reversion Agreement. The
23 Milne Reversion Agreement contains language that narrows and limits Disney's
24 royalty obligation under the 1983 Agreement. For example, the Milne Reversion
25 Agreement uses the words "gross received, retained and irrevocably earned"; the
26 1983 Agreement uses the words "gross received."

27 156. To avoid proper royalties to Slesinger, Disney has engaged in revenue
28 stream shifting and other financial dealings, including, but not limited to:

- a. Exchanges of values in strategic alliances and not reporting or paying royalties on such exchanges;
- b. Exchanges of values to Disney "partners" who are "in behalf of" parties (e.g., Oriental Land Company for Tokyo Disney, and the Hong Kong Government for Hong Kong Disney);
- c. Converting revenues or anticipated revenues from Pooh Family of Characters to loan guarantees;
- d. Inter-Disney corporate relations; and
- e. Has structured its accounting practices not to retain records with sufficient detail based on accumulated and actual gross revenues generated by Disney, Disney affiliates, and global authorized parties.

157. Disney has also attempted to terminate the 1983 Agreement by negotiating and entering into agreements with Clare Milne (through her receiver) and Hunt resulting in the execution and service of the Termination Notices. Further, Disney used the execution and service by Clare Milne (through her receiver) and Hunt of the Termination Notices to try to counter the negative effect on the public markets for Disney securities as a result of rulings in the 1991 State Court Action that were materially adverse to Disney.

158. As a result of Disney's material breaches, Slesinger has been damaged. Because of Disney's actions, Slesinger does not know the exact amount of damage, but will prove the amount at trial after discovery.

WHEREFORE, Slesinger prays for relief as set forth herein.

FIFTH CLAIM FOR RELIEF
BREACH OF THE IMPLIED COVENANT
OF GOOD FAITH AND FAIR DEALING

159. Slesinger incorporates by reference each of the paragraphs set forth above as though fully set forth hereunder.

1 160. By way of this Fifth Claim for Relief, Slesinger is not asserting any
2 claims which it is estopped from bringing due to the 1991 State Court Action.

3 161. Implied in the 1983 Agreement was a covenant by Disney that Disney
4 would act in good faith and deal fairly with Slesinger and would do nothing to
5 deprive Slesinger of the benefits of the 1983 Agreement.

6 162. Slesinger has performed all conditions, covenants and promises
7 required on its part to be performed in accordance with the terms and conditions of
8 the 1983 Agreement.

9 163. Disney has breached the implied covenant of good faith and fair
10 dealing in the 1983 Agreement by failing to pay the proper royalties to Slesinger
11 and additional acts in breach.

12 164. Contrary to the implied covenant of good faith and fair dealing,
13 Disney has been and continues to try to dilute Slesinger's intellectual property
14 rights and destroy its rights under the 1983 Agreement.

15 165. Despite its attempts to terminate the 1983 Agreement, Disney knew
16 the 1983 Agreement was not subject to termination under the United States
17 Copyright Act. Even though the 1983 Agreement involved the grants of rights
18 other than rights under copyright, Disney orchestrated a plan to create the
19 appearance that the 1983 Agreement could be terminated under the United States
20 Copyright Act.

21 166. By inducing Clare Milne, by and through Coyne as her Receiver, and
22 Hunt to serve the Termination Notices, Disney undertook a scheme intended to
23 destroy Slesinger's rights (a) in and to the Pooh Brand, and (b) to receive royalties.
24 Disney paid substantial funds under the 2001 Buyout Agreement and, under an
25 indemnification provision of the Milne Reversion Agreement, has paid attorney's
26 fees for Clare Milne and Hunt in this Action.

27 167. Further, Disney has used the funds otherwise payable to Slesinger to
28 leverage its other business segments. For example, instead of paying funds owing

1 to Slesinger, Disney has commingled and converted the equivalent sums and used
2 them to finance its Asian expansion and to reduce its debt. Because the royalty
3 payable to Slesinger is based on all commercial exploitation (with minor
4 exceptions), and because Disney conducts its business internationally, the
5 consideration on which the royalty is based is dispersed among multiple revenue
6 streams, multiple business segments, and multiple sub-licensees.

7 168. Finally, Disney has committed material breaches of the implied
8 covenant of good faith and fair dealing in the 1983 Agreement by acquiring the
9 Milne and Hunt interests in order to create the appearance to Disney shareholders
10 that Disney could terminate Slesinger's rights in the 1983 Agreement.

11 169. Disney breached the implied covenant of good faith and fair dealing
12 contained in the 1983 Agreement.

13 170. As a result of Disney's breach, Slesinger has been damaged. Because
14 of Disney's actions, Slesinger does not know the exact amount of damage, but will
15 prove the amount at trial after discovery.

16 WHEREFORE, Slesinger prays for relief as set forth herein.

17 **SIXTH CLAIM FOR RELIEF**

18 **FRAUD**

19 171. Slesinger incorporates by reference each of the paragraphs set forth
20 above as though fully set forth hereunder.

21 172. By way of this Sixth Claim for Relief, Slesinger is not asserting any
22 claims which it is estopped from bringing due to the 1991 State Court Action.

23 173. Since the signing of the 1983 Agreement, Disney has engaged in
24 fraudulent conduct. Disney knows that the royalty statements it has provided to
25 Slesinger are false. When Disney presents the royalty statements to Slesinger,
26 Disney is making an implied statement that all gross revenues from the
27 commercialization of the Pooh Elements were properly reported and paid by
28 Disney, its affiliates, and in behalf of parties.

1 174. Disney has provided Slesinger with knowingly false statements with
2 the intention that Slesinger rely on them. Slesinger has relied on the royalty
3 statements to its detriment because it realistically has no way to independent verify
4 the amounts stated in the statements.

5 175. Disney made representations regarding the accuracy and truthfulness
6 of the royalty statements with the intent to deprive Slesinger of royalties and in
7 conscious disregard of Slesinger's rights.

8 176. Though Slesinger has expended substantial effort to discover the
9 truth, it has encountered great difficulties because of Disney's refusal to cooperate
10 with audits and to provide complete information regarding accounting issues.
11 Discovery by Slesinger also has been affected by Disney's historical destruction of
12 records and Disney's inadequate accounting systems .

13 177. The aforementioned acts were done maliciously, oppressively, and
14 with intent to defraud, and Slesinger is entitled to punitive and exemplary damages
15 in an amount to be shown according to proof at the time of trial.

16 WHEREFORE, Slesinger prays for relief as set forth herein.

17 **SEVENTH CLAIM FOR RELIEF**

18 **DECLARATORY RELIEF AS TO THE 1983 AGREEMENT**

19 178. Slesinger incorporates by reference each of the paragraphs set forth
20 above as though fully set forth hereunder.

21 179. A justiciable controversy exists between Slesinger and Disney with
22 respect to the parties respective rights and obligations under the 1983 Agreement
23 as a result of Disney's material breaches of the 1983 Agreement.

24 180. As a result, Slesinger seeks a declaration as follows:

25 a. The grant of rights to Disney contained in the 1983 Agreement
26 is terminated and without legal effect.

27 b. The effect of the termination of the grant of rights to Disney
28 contained in the 1983 Agreement is as follows:

- 1 (i) All of Disney's rights in and to the Pooh Elements are
2 terminated.
3 (ii) All of the rights described in the 1983 Agreement shall
4 revert to Slesinger, including, but not limited to:
5 (a) The sole and exclusive United States and
6 Canadian rights for radio, television and
7 other broadcasting,
8 (b) The sole and exclusive United States and
9 Canadian rights for merchandising,
10 (c) Recording rights,
11 (d) The sole and exclusive United States and
12 Canadian rights for third-party licensing,
13 and
14 (e) The sole and exclusive United States and
15 Canadian rights for future sound, word, and
16 picture technology rights.

17 c. The transfer of the Additional Rights described in the Milne
18 Reversion Agreement has not been effected and that Slesinger retains these
19 Additional Rights.

20 181. A judicial declaration is necessary and appropriate at this time in
21 order that Slesinger may ascertain its rights and duties with respect to the 1983
22 Agreement.

23 WHEREFORE, Slesinger prays for relief as set forth herein.

24 **EIGHTH CLAIM FOR RELIEF**
25 **DECLARATORY RELIEF RE INVALIDITY OF**
26 **HUNT TERMINATION NOTICE**

27 182. Slesinger incorporates by reference each of the paragraphs set forth
28 above as though fully set forth hereunder.

1 183. The Termination Notice allegedly served by Hunt on or about
2 **November 4, 2002** is void and legally ineffective, and Slesinger seeks a
3 declaration from the Court to that effect, because: (a) the Termination Notice has
4 failed to comply with the requirements of the United States Copyright Act as to
5 identification of the grants purportedly terminated and of the works allegedly
6 covered by such Termination Notice; and/or because (b) Slesinger's rights at issue
7 are not encompassed by the grants purportedly identified in such Termination
8 Notice but are included in other agreements or were otherwise obtained by
9 Slesinger, including but not limited to, by virtue of agreements, consents, or by
10 operation of law; and/or (c) neither Clare Milne, Disney, nor Hunt has established
11 that Ernest H. Shepard was an author of the works identified in the Termination
12 Notice or possessed any rights under copyrights in such works.

13 WHEREFORE, Slesinger prays for relief as set forth herein.

14 **NINTH CLAIM FOR RELIEF**

15 **DECLARATORY RELIEF RE INVALIDITY OF**
16 **THE REVERSION AGREEMENT**

17 184. Slesinger incorporates by reference each of the paragraphs set forth
18 above as though fully set forth hereunder.

19 185. Slesinger has denied and continues to deny the validity of the Hunt
20 Termination Notice.

21 186. The original grantee under the 1930s Grant was Stephen Slesinger
22 and his successor, Slesinger. The only successor in title of Stephen Slesinger to
23 the rights granted under the 1930s Grant was and is Slesinger.

24 187. Because Section 304(c)(6)(D) guarantees to the "original grantee" or
25 its "successor in title" the exclusive right to enter into an agreement to make a
26 further grant of rights terminated under Section 304 of the United States Copyright
27 Act in the two-year period between service of the Termination Notices and their
28 effective date, because Disney is neither the "original grantee" nor the "successor

1 in title,” and because the Reversion Agreement is a purported grant, as
2 distinguished from an agreement to make a further grant, the Reversion Agreement
3 is void *ab initio* and Slesinger seeks a declaration from the Court to that effect.

4 WHEREFORE, Slesinger prays for relief as set forth herein.

5 **TENTH CLAIM FOR RELIEF**

6 **INJUNCTIVE RELIEF**

7 188. Slesinger incorporates by reference each of the paragraphs set forth
8 above as though fully set forth hereunder.

9 189. Disney has been engaged in a pattern of unfair competition, material
10 breaches of the 1983 Agreement, and fraud, which has injured and continues to
11 injure Slesinger.

12 190. Slesinger has no plain, adequate, speedy or complete remedy at law to
13 address the wrongs alleged.

14 191. Slesinger will suffer great and irreparable harm if Disney’s wrongful,
15 unlawful and unfair conduct continues, and only injunctive relief can prevent the
16 same. If not so restrained, Disney’s wrongful conduct will continue, causing
17 further irreparable injury to Slesinger.

18 192. Slesinger seeks an order enjoining and restraining Disney from
19 engaging in unauthorized uses, distribution, or exploitation of the Pooh Family of
20 Characters or the Pooh Elements outside the grant in the 1983 Agreement.

21 WHEREFORE, Slesinger prays for relief as set forth herein.

22 **ELEVENTH CLAIM FOR RELIEF**

23 **LIMITED SCOPE OF HUNT TERMINATION NOTICE**

24 193. Slesinger incorporates by reference each of the paragraphs set forth
25 above as though fully set forth hereunder.

26 194. Disney seeks a declaration from this Court that, as a result of the Hunt
27 Termination Notice, the 1983 Agreement between Slesinger and Disney

1 terminated as a matter of law on **November 4, 2004**, and Disney is not required to
2 pay Slesinger royalties under the 1983 Agreement after that date.

3 195. If the Hunt Termination Notice were adjudged to be valid, any
4 termination by Hunt pursuant to § 304(d) of the United States Copyright Act
5 would not have any effect on the 1983 Agreement.

6 196. Moreover, if the Hunt Termination Notice were adjudged to be valid,
7 Disney's royalty obligations to Slesinger under the 1983 Agreement, under legal
8 and equitable principles, will remain in force notwithstanding the Hunt
9 Termination Notice.

10 WHEREFORE, Slesinger prays for relief as set forth herein.

11 **TWELFTH CLAIM FOR RELIEF**

12 **VIOLATION OF CALIFORNIA BUSINESS**

13 **AND PROFESSION CODE § 17200 et seq.**

14 **AND UNFAIR COMPETITION**

15 197. Slesinger incorporates by reference each of the paragraphs set forth
16 above as though fully set forth hereunder.

17 198. Disney induced Hunt and Coyne (purportedly acting on Milne's
18 behalf) each to serve Termination Notices upon Slesinger and thereafter entered
19 into the Reversion Agreements with Milne and Hunt.

20 199. These aforementioned actions were calculated by Disney to destroy
21 Slesinger's rights and interest under the 1983 Agreement and thereby evade
22 Disney's royalty obligations to Slesinger.

23 200. Whether or not the Hunt Termination Notice is invalid, Disney's
24 actions constitute an unlawful and unfair business practice within the meaning of
25 California Business and Profession Code § 17200 et seq.

26 201. Whether or not the Hunt Termination Notice is invalid, Disney's
27 actions constitute unfair competition under the common law.
28

1 202. This Court should use its equitable powers to declare that the grant of
2 rights to Disney contained in the 1983 Agreement is terminated and without legal
3 effect. The effect of the termination of the grant of rights to Disney contained in
4 the 1983 Agreement would be as follows:

5 a. All of Disney's rights in and to the Pooh Elements are
6 terminated.

7 b. All of the rights described in the 1983 Agreement shall revert
8 to Slesinger, including, but not limited to:

- 9 (i) The sole and exclusive U.S. Canadian rights for radio,
10 television and other broadcasting,
11 (ii) Merchandising rights,
12 (iii) Recording rights, and
13 (iv) Third-party licensing rights.

14 204. If this Court uses its equitable powers to declare that the grant of
15 rights to Disney contained in the 1983 Agreement is terminated and without legal
16 effect, then the effect of the termination of the grant of rights to Disney contained
17 in the 1983 Agreement also would be as follows:

18 a. Restitution from Disney of Slesinger's interest in the Pooh
19 Elements; and

20 b. A permanent injunction against Disney prohibiting Disney
21 from exploiting the Pooh Elements if Disney does not compensate Slesinger and
22 from taking any action that would destroy, injure, or otherwise impair Slesinger's
23 rights and interest in the Pooh Elements.

24 WHEREFORE, Slesinger prays for relief as set forth herein.

25 **PRAYER FOR RELIEF**

26 Wherefore, Slesinger prays for relief as follows:

27 1. Compensatory and general damages in excess of **Two Billion**
28 **Dollars**, the exact amount according to proof;

- 1 2. Special damages according to proof;
- 2 3. The profits of Disney that are attributable to Disney's acts of
- 3 infringement, and/or a reasonable royalty, according to proof;
- 4 4. A declaratory judgment adjudging and declaring that:
- 5 a. The grant of rights to Disney contained in the 1983 Agreement
- 6 is terminated and without legal effect.
- 7 b. The effect of the termination of the grant of rights to Disney
- 8 contained in the 1983 Agreement is as follows:
- 9 (i) All of Disney's rights in and to the Pooh Elements are
- 10 terminated.
- 11 (ii) All of the rights described in the 1983 Agreement shall
- 12 revert to Slesinger, including, but not limited to:
- 13 (a) The sole and exclusive United States and
- 14 Canadian rights for radio, television and other
- 15 broadcasting,
- 16 (b) The sole and exclusive United States and
- 17 Canadian rights for merchandising,
- 18 (c) Recording rights,
- 19 (d) The sole and exclusive United States and
- 20 Canadian rights for third-party licensing, and
- 21 (e) The sole and exclusive United States and
- 22 Canadian rights for future sound, word, and
- 23 picture technology rights.
- 24 c. The transfer of the Additional Rights described in the Milne
- 25 Reversion Agreement has not been effected and that Slesinger retains these
- 26 Additional Rights.
- 27
- 28

1 5. A preliminary and permanent injunction enjoining and restraining
2 Disney from engaging in any unauthorized uses, distribution, or exploitation of the
3 Pooh Family of Characters or the Pooh Elements.

4 6. Punitive damages due to Disney's fraudulent conduct.

5 7. The imposition of a constructive trust on the amounts Disney has
6 underpaid Slesinger according to Disney's obligations under the 1983 Agreement.

7 8. The imposition of a constructive trust on Disney of the amounts owed
8 Slesinger according to Disney's royalty obligations under the 1983 Agreement,
9 which Disney used as leverage to benefit its various business segments and profit
10 centers, both in the United States and in foreign countries.

11 9. If the Hunt Termination Notice is adjudged valid, a declaration that
12 any termination by Hunt pursuant to § 304(d) of the United States Copyright Act:

13 a. could only affect rights under United States copyright granted
14 thereunder as set forth in § 304 of the United States Copyright Act; and

15 b. would not have any effect on Disney's royalty obligations to
16 Slesinger under the 1983 Agreement and that such royalty obligations, under legal
17 and equitable principles, will remain in force notwithstanding the Hunt
18 Termination Notice.

19 10. If the Hunt Termination Notice is adjudged to be valid, and the relief
20 in paragraph 10, above, is not awarded, in the alternative, a declaration that any
21 such terminated rights which Disney acquires for itself, and the proceeds thereof,
22 must be held by Disney in actual or constructive trust for Slesinger's benefit.

23 11. For violation of Section 17200 *et seq.* of the California Business and
24 Profession Code:

25 a. A declaration that the grant of rights to Disney contained in the
26 1983 Agreement is terminated and without legal effect. The effect of the
27 termination of the grant of rights to Disney contained in the 1983 Agreement
28 would be as follows:

1 (i) All of Disney's rights in and to the Pooh Elements are
2 terminated.

3 (ii) All of the rights described in the 1983 Agreement shall
4 revert to Slesinger, including, but not limited to:

5 (a) The sole and exclusive United States and
6 Canadian rights for radio, television and other
7 broadcasting,

8 (b) The sole and exclusive United States and
9 Canadian rights for merchandising,

10 (c) Recording rights,

11 (d) The sole and exclusive United States and
12 Canadian rights for third-party licensing, and

13 (e) The sole and exclusive United States and
14 Canadian rights for future sound, word, and
15 picture technology rights.

16 b. If this Court uses its equitable powers to declare that the grant
17 of rights to Disney contained in the 1983 Agreement is terminated and without
18 legal effect, then the effect of the termination of the grant of rights to Disney
19 contained in the 1983 Agreement also would be as follows:

20 (i) Restitution from Disney of Slesinger's interest in the
21 Pooh Elements; and

22 (ii) A permanent injunction against Disney prohibiting
23 Disney from exploiting the Pooh Elements if Disney does not compensate
24 Slesinger and from taking any action that would destroy, injure, or otherwise
25 impair Slesinger's rights and interest in the Pooh Elements.

26 12. Prejudgment interest at the legal rate.

27 13. Reasonable attorneys' fees and costs, including attorneys' fees and
28 costs under, *inter alia*, § 505 of the United States Copyright Act; and

1 14. All such other and further relief as the Court deems just and proper.

2 Dated: October 6, 2006

COTCHETT, PITRE, SIMON & McCARTHY

3
4
5 By:



6 JOSEPH W. COTCHETT
7 Attorneys for Defendant and
8 Counterclaimant Stephen Slesinger, Inc.
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JURY DEMAND

Plaintiff Stephen Slesinger, Inc. demands a jury trial on all issues so triable.

Dated: October 6, 2006

COTCHETT, PITRE, SIMON & McCARTHY


By: 
JOSEPH W. COTCHETT
*Attorneys for Defendant and
Counterclaimant Stephen Slesinger, Inc.*

Exhibit 2

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 02-8508 FMC(PLAx) Date February 15, 2007

Title CLARE MILNE, et al. v. STEPHEN SLESINGER, INC.

Present: The FLORENCE-MARIE COOPER
Honorable _____

Alicia Mamer

Not present

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not present

Not present

Proceedings: ORDER FOR LETTER BRIEFS (In Chambers)

It appears to the Court that all remaining claims of all parties in the Amended Complaint and Third Party Complaint are disposed of by the Court's Order Granting Defendant and Counterclaimant Stephen Slesinger, Inc.'s Motion for Summary Judgment, filed concurrently with this Order. Defendant is hereby ORDERED to file a letter brief, within ten (10) days of the date of the entry of this Order, to address whether any of its Fourth Amended Counterclaims remain viable and/or whether final judgment may be entered in its favor at this time. Plaintiff Disney Enterprises, Inc. and Third Party Defendant Harriet Jessie Minette Hunt may file responsive letter briefs within ten (10) days thereafter.

_____: N/A
Initials of Preparer AM